

JAMES VALENTINE.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JAMES VALENTINE *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's original evidence, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,
[L. S.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable Judges of the Court of Claims of the United States:

The petition of James Valentine, assignee of Oliver Wiley, of Chazy, in the county of Clinton, in the State of New York, begs leave respectfully to represent unto this honorable court that he is interested in, and is the owner of, a claim which he has against the United States, arising from the consideration that on or about the first day of March, A. D. 1813, the United States pressed into its service his hired man, and one span of horses, sleigh, and harness, and employed them in transporting troops and military stores from Alburgh, Vermont, to

Plattsburgh, and from Plattsburgh to Sackett's Harbor, and detained them sixty days, and so used them that said horses died.

And for this service and loss your petitioner claims that he is justly entitled to be paid \$200, the value of said horses, and one sleigh and harness destroyed valued at \$25 each, and for sixty days' use of team and driver at \$3 per day, making in the aggregate four hundred and thirty dollars, exclusive of interest. This claim was presented to Congress in 1854, but what action has been had thereon he is not informed.

And therefore prays this honorable court will examine and hear said claim and such proof as he may have to offer in support thereof; and that they report a bill to Congress for the payment of said claim, with the interest from the time of said loss and service.

And your petitioner, as in duty bound, will ever pray.

Dated Chazy, August 9, 1855.

JAMES VALENTINE.

Witnesses: STEPHEN ^{His} + WILEY.
mark.

JOSEPH ^{His} + GONYETTE.
mark.

STATE OF NEW YORK, *County of Clinton, ss:*

Oliver Wiley, of Chazy, in the county of Clinton, in the State of New York, being duly sworn, doth depose and say that the petition above by him subscribed contains the truth according to the best of his information and belief.

JAMES VALENTINE.

Sworn to and subscribed before me this ninth day of August, A. D. 1855.

ANTHONY TROMBLY,
Justice of the Peace.

IN THE COURT OF CLAIMS.

OLIVER WILEY *vs.* THE UNITED STATES.

Schedule of Claimant's evidence.

1. The deposition of George Weekes, as taken and returned by the United States commissioner of the Court of Claims for the county of Clinton, New York.

2. The deposition of Richard Steanburgh, as taken and returned by the same commissioner.

3. The petition and evidence filed with the clerk containing the application to Congress for relief.

4. Oath of claimant and assignment of claim to his son Albert Wiley, and assignment from Albert Wiley to his brother-in-law James Valentine, on which a motion will be made to revive the suit in the name of the assignee, James Valentine.

SIR: Please take notice that the testimony on the part of the claimant is closed, and the original testimony so taken and closed, together with the assignments, are on file with the clerk of this court.

Dated January 18, 1858.

Yours, &c.,

C. K. AVERILL,
Attorney for Claimant.

DANIEL RATCLIFF, Esq.,
Assistant Solicitor United States Court of Claims.

STATE OF NEW YORK, *County of Clinton, ss.*

On this 25th day of November, A. D. 1858, personally came George Weeks and Richard Steanburgh, the witnesses within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions were written down by the commissioner, and then proposed by him to the witnesses; and the answers thereto were written down by the commissioner in the presence of the witnesses, who then subscribed the depositions in the presence of the commissioner. The depositions of Gorge Weeks and Richard Steanburgh, taken at the request of Calvin Wiley, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Oliver Wiley. The adverse party was notified, did not attend, and did not object, but reserved the right to cross-interrogatories on the coming in of the answers.

H. G. ROBBINS,
Com'r U. S. Court of Claims.

COURT OF CLAIMS.

OLIVER WILEY, claimant, *vs.* THE UNITED STATES.

Interrogatories and cross-interrogatories to be administered to Richard Steanburgh, a witness offered on the part of the claimant in the above entitled action, and answers to be written down and taken by the United States commissioner of the court appointed for the county of Clinton, in the State of New York, to be used on the trial of this action, to wit:

Direct examination.

1st. Do you know the parties, or either of them, in the above entitled action?

2d. Do you know the claimant ever performed any and what service for the United States in the war of 1812 with Great Britain; if you do, state the time, place, and circumstances fully as you know?

3d. In what manner did he enter the service, and by whom and what agents employed, and whether the service was voluntary or involuntary, and where did his team go to, how long detained, and

what injury befell his team, sleigh, and harness, and by whose fault, and what was the value of the horses, sleigh, and harness.

4th. Who drove the team, and whose team was it, and where is the person who drove the team, and was claimant paid?

5th. What is your age and occupation, and where your place of residence the last year?

6th. What relation are you to the claimant, and have you any interest in the present claim?

Lastly, if you know any other matter or thing to which you have not been interrogated, state it fully as far as you know.

The same interrogatories to be administered to Stephen Wiley and James Wiley, witnesses for the claimant.

C. K. AVERILL,
Attorney for Claimant.

COURT OF CLAIMS.

OLIVER WILEY, claimant, *vs.* THE UNITED STATES.

Interrogatories and cross-interrogatories to be administered to George Weeks, a witness offered on the part of the claimant in the above entitled action, and answers to be written down and taken by the United States commissioner of this court appointed for the county of Clinton, in the State of New York, to be used on the trial of this action, to wit:

Direct Examination.

1st. Do you know the parties, or either of them, entitled in this action?

2d. Do you know the claimant ever performed any and what service for the United States in the war of 1812, declared by the United States against Great Britain; if you know, state the time, place, duration, and nature of the service, and whether it was voluntary or involuntary, and in what manner he entered the service, and what with?

3d. Whose team was it, and who drove it for the claimant, and where is that person now?

4th. If you know, state what injury occurred to the team, sleigh, and harness while in said service?

5th. What was the value of said team, sleigh, and harness, separately, and the value per diem for the team?

Lastly, do you know any other matter or thing to which you have not been interrogated; state it fully; and whether you are in any way related to the claimant, or have any interest in said claim.

C. K. AVERILL,
Attorney for Claimant.

Cross-examination.

No questions at present.

D. RATCLIFFE,
Assistant Solicitor Court of Claims.

IN THE COURT OF CLAIMS.

OLIVER WILEY, claimant, *vs.* THE UNITED STATES.

Deposition of George Weeks, a witness, produced, sworn, and examined on oath, on the twenty-fifth day of November, A. D. 1858, at my office in Champlain, in the county of Clinton, and State of New York, by virtue of the annexed papers.

George Weeks, of Rouse's point, in the county of Clinton and State of New York, aged sixty-seven years, a witness, produced, sworn, and examined on the part and behalf of the claimant, Oliver Wiley, deposeth and saith as follows:

Imprimis. To the first interrogatory, the said George Weeks says: That he knows the parties.

To the second interrogatory, he answers and says: That he is sixty-seven years of age, and a farmer, and has resided at Rouse's point during the past year and for a great number of years; that on or about the 8th day of March, A. D. 1813, he was residing at Champlain, Clinton county, New York, when a United States officer—a lieutenant—and eight United States soldiers, whose names he does not know, came to his house at Rouse's point, and pressed his team, and the officer and men got into his sleigh; he was ordered to drive them to Alburgh, in the county of Grand Isle, in the State of Vermont, which order he obeyed, and drove them to Alburgh, where the said officer set about pressing other teams, and pressed the span of horses, sleigh, and harness belonging to this claimant, into the United States service, and was ordered to Plattsburgh, and went there, and was taken into the American camp, commanded by General Pike; that as soon as the said army was ready to move, a squad of soldiers, with implements of war, entered the sleigh of claimant, and the army moved westward, in sleighs pressed chiefly for the purpose of moving General Pike's command to Sackett's Harbor; General Pike was present, and directed the movements of the army; that the claimant's team delivered its load at Sackett's Harbor, and was gone thirty days to his knowledge, and how much longer he does not know, as his team gave out and lagged behind.

To the third interrogatory, he answers: The span of horses, sleigh, and harness belonged to claimant, but claimant did not go with the team, but hired one Thomas Clark, who went with it, and drove it to Sackett's Harbor; Clark is now dead.

To the fourth interrogatory, he answers: That he was in company with claimant's team all the way from Plattsburgh to Sackett's harbor; the sleighing was poor, some of the time bare ground; some of the teams were loaded heavier than others; claimant's team was heavily loaded, and obliged to keep up with those that were lighter loaded; they were not suffered to lag behind, and were urged forward, whether able to go or not; I noticed that claimant's team was urged beyond its strength, not by the driver, but those in the sleigh and the officers in command; when they got to Sackett's Harbor, claimant's harness was all drawn to pieces, and his sleigh broken,

and horses jaded out; in returning, the horses gave out at Canton, and were unable to draw the broken, empty sleigh; the driver was obliged to lead the horses home.

To the fifth interrogatory, he answers: As horses were going, the span was worth two hundred dollars, the sleigh twenty-five dollars, and the harness twenty-five dollars; the per diem allowance by the United States for a span of horses was three dollars per day and team found by the United States, and four dollars per day when the owner found fodder.

To the last interrogatory, he answers: That he has no interest in this claim, nor is he related to the claimant; that there is no other matter that he now recollects that could be of any benefit to either party.

GEORGE WEEKS.

Subscribed and sworn to before me this 25th day of November, 1858.

H. G. ROBBINS,

Commissioner of United States Court of Claims.

IN THE COURT OF CLAIMS.

OLIVER WILEY, claimant, *vs.* THE UNITED STATES.

Deposition of Richard Steanburgh, a witness produced, sworn, and examined on oath, on the twenty-fifth day of November, A. D., 1858, at my office in Champlain, in the county of Clinton, and State of New York, by virtue of the annexed papers.

Richard Steanburgh, of Duane, in the county of Franklin, in the State of New York, aged seventy-one years, a witness produced, sworn, and examined on the part and behalf of the claimant, Oliver Wiley, deposeth and saith as follows:

Imprimis. To the first interrogatory this deponent saith: I know the parties.

To the second interrogatory he answers and says: That the claimant, in the fore part of March, 1813, was residing in Alburgh, Vermont, and a neighbor to this deponent, and was the owner of a span of horses, sleigh, and harness; that on or about the 8th day of March, 1813, a United States press-gang came to Alburgh, headed by an officer of the United States army, and pressed the above team, and pressed deponent's team; that they were ordered to Plattsburgh as the place of rendezvous, where the main body of the United States army lay, under the command of General Pike, and awaited further orders; that after a detention there of nine days the whole army of General Pike moved west, in the sleighs pressed for the purpose, claimant's team aforesaid being one of them. The teams delivered their loads at Sackett's Harbor, upwards of two hundred miles from where the claimant's team was pressed. Claimant's team was absent in said service sixty days.

To the third interrogatory he answers and says: That the manner of entering the service and duration of service has been stated in his

answer to the second interrogatory; the service was involuntary; the claimant was obliged to hire a person to drive his team by the name of Clark, who went with the team to Sackett's Harbor; the horses gave out in returning, at Canton; the cause of their giving out was the heavy loading them by the United States agents, and crowding them forward over bad roads and scarcity of fodder. When I saw them at Canton, the horses were entirely jaded out, and could not draw the sleigh. Clark was obliged to leave the sleigh and harness, both of which were broken to pieces and valueless, and led the horses home. It was sixty days before he got home with them, and they both died soon after from the hard usage aforesaid. The fault was in the United States agents loading them so heavily, and compelling them to proceed and keep up with the army. The horses were worth two hundred dollars, the sleigh and harness fifty dollars.

To the fourth interrogatory he answers: Clark drove the team for claimant, and the team was claimant's. Clark is now dead. I know the claimant nor Clark was not paid.

To the fifth interrogatory he answers and says: That he is seventy-one years old, and by occupation a farmer. The last two months I have been a resident of Duane, Franklin county, New York; a year previous I was a resident of Stockholm, St. Lawrence county, New York.

To the sixth interrogatory he says: Claimant married my sister, and he has no interest in the present claim.

To the last interrogatory he answers: That he knows of no other matter or thing material to this case, except it be that the claimant has recently died.

RICHARD ^{his} + STEANBURGH.
mark

Sworn and subscribed before me, November 25, 1858.

H. G. ROBBINS,
Commissioner of United States Court Claims.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Oliver Wiley, of Chazy, in the county of Clinton and State of New York, humbly sheweth unto your honorable body that in the year 1812, he was a resident citizen of Alburgh, county of Grand Isle, in the State of Vermont; that the same year he was drafted in the militia of the last mentioned State, and while serving out his term at Alburgh, aforesaid, to wit: on or about the first day of January, 1813, his two-horse team, sleigh, and harness were pressed by the United States troops under command of General Pike, into the service of the United States; that a detachment of United States troops were then stationed at Alburgh, aforesaid, and when ordered to join the main army under General Pike, at Plattsburgh, his team as aforesaid was pressed, and your petitioner was obliged to

furnish a man to go with his said team and take charge and care of it, and be subject to the orders of the United States. That said team left Alburgh with the detachment aforesaid, loaded with men and baggage, on the day before mentioned, and on arriving at camp in Plattsburgh, was further detained there until the army, under the command of the general officer aforesaid, was ready to move for the place of their destination at Sackett's harbor. That one Thomas Clark, of Alburgh, aforesaid, a trusty man, (who is now dead,) was employed by your petitioner to go with said team, and who went with them to Sackett's harbor, carrying United States troops and baggage; that from the time the said team left Alburgh until they returned from Sackett's harbor, was two months, or sixty days, during all which time they were in the service of the United States, and for which service he was never paid. And your petitioner further represents that when said horses returned they were entirely used up and died immediately, and the harness broken in pieces, the sleigh broken and tied up with withs, and both sleigh and harness valueless. That said horses were worth, when they were pressed into said service, the sum of two hundred dollars, the harness \$25, and the sleigh \$25; that the use of said team, with the teamster, was worth two dollars per day and found by the United States; and for which loss your petitioner has never been paid.

Your petitioner therefore prays that your honorable body will pass a law providing for the payment of the said property and for the use of the same, with reasonable interest from the time of their return as aforesaid.

And your petitioner, as in duty bound, will ever pray.

OLIVER ^{his} + WILEY.
mark.

Witness: C. K. AVERILL.

CHAZY, *February* 28, 1854.

STATE OF NEW YORK, *County of Clinton*, ss:

Oliver Wiley, the above-named petitioner, being duly sworn, doth depose and say that he has heard read the above petition by him subscribed, and that the matter and facts therein stated are true according to the best of his knowledge, information, and belief, and that in respect to the matter stated on information he believes it to be true. And further deponent saith not.

OLIVER ^{his} + WILEY.
mark.

Sworn and subscribed before me this twenty-eighth day of February, 1854.

ANTHONY TROMBLY,
Justice of the Peace.

THE UNITED STATES TO OLIVER WILEY,	Dr.
1813—To span of valuable horses pressed, and died from hard service.....	\$200 00
To sleigh, broken in pieces from hard service.....	25 00
To harness, broken in pieces from hard service.....	25 00
To sixty days' use of team, at \$2 per day.....	120 00
	<hr/>
	370 00
To interest from 1813, at 6 per cent.....	910 00
	<hr/>
	1,280 00
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STATE OF NEW YORK, *County of Clinton, ss:*

Stephen Wiley and James Wiley, of Chazy and Champlain, in said county, being duly sworn, doth depose and say they have each read the foregoing petition of Oliver Wiley, and know the contents thereof. And deponents further say that they are knowing to the facts in relation to the pressing of the team aforesaid, at the time it occurred, into the service of the United States, and it was absent, under said impressment, sixty days; that soon after, and almost immediately on the return of said horses, they died; and it evidently appeared that they had been used up by hard service. That they valued the said horses at two hundred dollars, and the sleigh and harness was worth when pressed, each, the sum of twenty-five dollars, and when returned were useless. And deponents further say that the use of said team and the man furnished to drive them, were worth \$2 per day and found. And further they say not.

STEPHEN ^{his} + WILEY.
mark.

JAMES ^{his} + WILEY.
mark.

Sworn and subscribed before me February 28, 1854.

ANTHONY TROMBLY,
Justice of the Peace.

I certify that I am well acquainted with Stephen and James Wiley, who appeared before me on the day within mentioned and subscribed to the within affidavit, and they are persons of credibility.

ANTHONY TROMBLY,
Justice of the Peace.

I, Oliver Wiley, of the town of Chazy, county of Clinton, State of New York, do hereby sell, assign, grant, and convey all my right, title, and interest in certain claims that I hold against the United States government, to my son, Albert Wiley, in money and

land, or whatever I may draw from the United States in my lifetime or after my death.

Dated at Chazy this 23d day of March, 1855.

OLIVER ^{his} + WILEY.

MARY ^{her} + WILEY.
_{mark.}

In presence of—

ANTHONY TROMBLY.

JOSEPH ^{his} + GOAYETT.
_{mark.}

STATE OF NEW YORK, *Clinton county*, ss :

On this 21st day of December, 1858, before me personally came Anthony Trombly, a subscribing witness to the above instrument, to me known, and he being by me duly sworn, did depose and say that he resided in the town of Chazy, in said county ; that he knew Oliver Wiley and Mary Wiley, the individuals described in and who executed the said instrument ; that he was present and saw the said Oliver Wiley and Mary Wiley execute the same ; that the said Oliver Wiley and Mary Wiley acknowledged to him the execution thereof ; and that thereupon he, the said Anthony Trombly, became the subscribing witness thereto.

B. W. MERRITT, *Justice of the Peace.*

STATE OF NEW YORK, }
Clerk's office of Clinton county, } ss :

I, Frederick W. Ames, clerk of the county courts of said county, (the same being courts of record,) do hereby certify that B. W. Merritt, whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a justice of the peace in and for said county of Clinton, dwelling therein, commissioned, sworn, and duly authorized to take the same ; and further, that I am well acquainted with the handwriting of said justice of the peace, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof, I have hereunto set my name and affixed the seal of said court and county this 27th day of December, [L. s.] A. D. 1858.

F. W. AMES, *Clerk.*
Per JOHN CROWLEN, *Deputy.*

On the 30th day of November, in the year of our Lord one thousand eight hundred and fifty-eight, before the undersigned witness, residing in the town of Champlain, in the county of Clinton, in the State of New York, personally appeared and was present Mr. Albert

Wiley, of the said town of Champlain, farmer, who, being present as aforesaid, did and doth acknowledge and confess that for and in consideration of the price or sum of one hundred dollars, lawful money of the United States, to him, the said Albert Wiley, in hand paid by Mr. James Valentine, of Champlain aforesaid, at and before the ensailing and delivery of these presents; he, the said Albert Wiley, hereby acknowledging the receipt of the said sum of one hundred dollars, hath, and by these presents doth, grant, bargain, transfer, alienate, sell, and assign all the right, title, interest, property, claim, or demand of any kind whatsoever, which he, the said Albert Wiley, his heirs or legal representatives, have, or have in any way or manner a right to claim from the government of the United States for and on account of any services which the late Oliver Wiley, in his lifetime, of the town of Chazy, deceased, did for the government of the said United States, or for any losses which he, the said Oliver Wiley, may have sustained during the war between the said United States and Great Britain, usually called the war of 1812, hereby yielding unto the said James Valentine, his heirs and assigns, all and singular the rights and claims of him, the said Albert Wiley, his heirs and assigns, which he or they could of right claim from the said United States for and on account of any claim which he, the said late Oliver Wiley, father of the said Albert Wiley, may at any time have had against the said United States.

Done and passed the day, month, and year first above written.

In faith and testimony whereof, the said Albert Wiley hath to these presents, first duly read, set, and subscribed his seal and signature, in presence of John Hungerford witnessing the execution hereof.

ALBERT WILEY. [L. s.]

J. HUNGERFORD.

STATE OF NEW YORK, *County of Clinton*, ss:

On this 30th day of November, 1858, before me personally came Albert Wiley, to me known to be the individual described in and who executed the foregoing assessment, and acknowledged that he executed the same.

JOHN RULLIS, *Justice of the Peace*.

STATE OF NEW YORK, }
Clerk's office of *Clinton County*, } ss:

I, Frederick W. Ames, clerk of the county courts of said county, (the same being courts of record,) do hereby certify that John Bullis, whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a justice of the peace in and for said county of Clinton, dwelling therein, commissioned, sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of said justice of the peace, and verily believe that the signature to the said certificate of proof or

acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof, I have hereunto set my name and affixed the seal of said court and county, this 29th day of December, [L. s.] A. D. 1858.

F. W. AMES, *Clerk.*
Per JOHN CROWLEN, *Deputy.*

IN THE COURT OF CLAIMS.

No. 324.

JAMES VALENTINE, Assignee, etc., *vs.* THE UNITED STATES.

CLAIMANT'S POINTS AND BRIEF.

Statement.

General Pike, the agent of the United States, in command of the United States army on the northern frontier at Plattsburgh, in the war of 1812 sent out United States soldiers with an officer from his command to impress teams for transporting his army to Sackett's Harbor, and, among others, impressed the team of Oliver Wiley, a citizen of the United States. The team was used in such a way that the horses died, and damaged the harness and sleigh, and left the services unpaid.

The United States are liable for the injury to the team, &c.

They are also liable for the use of the team and for the amount of the ascertained aggregate value, \$430 and interest, which is stated in detail in the testimony of George Weeks. (See his answer to 5th interrogatory at page 7 of the Record.)

The grounds of liability on the part of the United States are :

I. The impressment was the act of the authorized agent of the United States, who was carrying on a war with great Britain ; and in support of the fact of agency, reference is here made to 2d volume "American Military and Naval Heroes," p. 23, from which the following is extracted :

"Immediately after the declaration of war, Pike was stationed with his regiment upon the northern frontier, and, upon the commencement of the campaign of 1813, was appointed a brigadier general ;" and, at page 24, as follows :

"He was selected for the command of the land forces in an expedition against York, the capital of Upper Canada, and on the 25th of April sailed from Sackett's Harbor."

American State Papers, Claims, p. 874, "Philip B. Robert's charge of building barracks for General Pike's troops, at Plattsburgh, December, 1812," &c.

"It follows that the nation is liable for the acts of such agents as it sees fit to employ in the prosecution of its object." Per Gilchrist,

C. J., in the case of the owners of the brig *Armstrong vs. the United States*. (See Devereux's Reports, page 172.)

II. It being the act of the United States, the fifth article of the amended constitution of the United States secures to the owner just compensation for property taken for public use. (See U. S. Statutes at Large, vol. 1, page 21.)

The just compensation meant is to make whole; and this cannot be done without applying the same remedy against the United States that the claimant could legally exact in an action of trover from an individual who converts the property of another, with interest from the time of conversion.

It was the duty of the agents to seek him and tender him the pay due from these impressed services and losses. It was never done. The evidence is he was not paid. (See answer to 4th interrogatory from witness Steanburgh, page 9 of the Record.)

III. It is the custom of Congress to provide by special acts for such claims.

See the following cases: Henry Knowles, (impressment of horses,) 24th Cong. 1st sess., Feb. 17, 1836; A. J. King, (impressment of horses,) 26th Cong. 1st sess., July 21, 1840, 6; George Miller, (impressment of horses,) May 8, 1820; Andrew Moore, (impressment of horses,) Feb. 5, 1833; Theophilus Cooksey, (impressment of horses,) 21st Cong. 1st sess., Jan. 30, 1830; David Fielding, (impressment of horses,) 19th Cong. 2d sess., March 2, 1827.

C. K. AVERILL,
Attorney for Claimant.

IN THE COURT OF CLAIMS.

JAMES VALENTINE *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for services rendered and losses sustained by Oliver Wiley, by the impressment of his team at Alburgh, Vermont, in 1813.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. Mr. Valentine claims as assignee of Oliver Wiley, but makes no proof of an assignment from him.

In the record are what purports to be an assignment from Oliver and Mary Wiley to Albert Wiley, and one from the latter to the plaintiff, but the execution of neither is proved so as to be legal evidence.

Second. There is no evidence that the assignment from Oliver and Mary Wiley includes the demand now presented.

That paper assigns the interest of Oliver Wiley "in certain claims that I hold against the United States government; to my son Albert Wiley, in money and land, or whatever I may draw from the United States in my lifetime, or after my death." (Record, p. 12.)

This is not an assignment of the claim in question, because it is not sufficiently described. What the claims were that he held is not described nor proved.

The assignment from Albert Wiley to the plaintiff does not follow the one to him, but is for a different matter, not specified in the one to him.

Third. That Wiley's team was taken into service and went from Alburgh, Vermont, to Plattsburgh and Sackett's Harbor, New York, and that it was driven by a person employed by him by the name of Thomas Clark.

Fourth. That the team was absent at least 30 days, but the exact number is not proved.

Weeks, in his deposition, says that Wiley's team was absent 30 days, and how much longer he did not know. (Record, p. 7.)

Steanburgh, in his evidence, says the team was absent in the service 60 days. (Record, p. 8.)

At page 9 he says it was 60 days before Clark got home with the horses. But this does not show how long they were employed by the impressing officers. *Weeks* got home, he says, in 30 days. *Steanburgh*, in his petition in his case, (No. 318,) swears that he was absent thirty-two days only. And in his deposition in this case (p. 8,) he swears he saw the horses when he was at Canton, (as did *Weeks* p. 7,) which is only a little over a hundred miles west of Alburgh. Of course he saw them on his way home, and which must have been some three or four days before he arrived there. Now, if Wiley's horses were kept away from home for sixty days, then they must have occupied some thirty days more in passing between Canton and Alburgh than *Steanburgh* did with his own team. This part of *Steanburgh's* statement needs confirmation to be credited.

Fifth. Wiley's horses died after they returned home, but there is no sufficient proof of the real cause of their death.

By *Steanburgh's* own statement, Clark kept up with him on his return as far as Canton. The inference is, that up to that time they were neither sick nor broken down. If otherwise, then the driver was in fault in going so fast.

There is no proof showing how far the horses were driven in any given time, none of the amount of load they drew, nor any showing that they scrimped in the quantity of their food, nor that it was of an unsuitable quality. The witnesses give opinions, but do not specify such facts as to enable others to form any conclusions for themselves.

The accounts which they give of the sleigh and horses prove them to have been substantially worthless. Nothing is proved concerning the state and condition of the horses or sleigh and harness before starting. There is no evidence that the driver objected to the size of the load drawn or the speed with which the journey was performed. The inference, therefore, is, that there was no just cause of complaint, as none was made at the time.

Sixth. There is no sufficient evidence that Wiley was not settled with at the time, and fully paid for the services rendered by his team.

Steanburgh, in his evidence, p. 9, says: "I know the claimant nor Clark was not paid." This is an attempt to swear to a negative

which he could not possibly know. He states no circumstances calculated to show that he knew this fact. He could only truly swear that he did not know that either Wiley or his hired man was paid. He could not know that they, in truth, had not been paid; although, as a matter of hearsay, he might suppose neither had been. This statement proves nothing, and can have no effect in settling matters of fact.

Seventh. There is no evidence that this claim was ever presented to the department for allowance, and none that it was presented to Congress prior to 1854—a period of forty-one years after it is claimed to have originated.

LEGAL PROPOSITIONS.

FIRST. *There is no evidence that the plaintiff is the owner of the demand in question.*

The papers relied upon to show that he acquired the same from Wiley through assignments are not proved so as to be evidence.

The assignment from Oliver Wiley does not include the present claim. It is too uncertain to prove anything, and it contains no words that cover the present case.

SECOND. The law of 1816 (3 U. S. L., 261) does not extend to this case. It only authorized paying such claims as should be presented within two years from its date. But if in force, it would not extend to the use of teams. The act clearly contemplates that such use had been compensated, and it provided for losses other than the use.

There is no law now in existence under which the plaintiff can be paid for the loss of his horses or the destruction of his sleigh and harness. If there is anything really due for services, on showing that fact the War Department can cause him to be paid, without a special law.

THIRD. *The presumption is that the use of the team was paid for at the time.*

The statement of Steanburgh concerning non-payment, who is pressing a similar claim, is not affirmative and positive, but is merely negative, and proves nothing. He could not know that no payment was made, and he swears to no circumstances calculated to induce that belief.

If the officer in charge had had no money, he still would have settled with Clark, the driver, and would have given him a certificate of the amount due, or an order on a proper quartermaster.

The silence of Wiley for more than forty years strengthens this presumption.

FOURTH. *There is no evidence that Wiley, or the plaintiff, has applied to the proper department for such compensation as he might be entitled*

to for the use of his team, or the loss of his horses and destruction of his sleigh and harness.

The plaintiff has no right of action until after demand and refusal to pay.

The presumption is, that if he has a legal right, it will be paid on demand. He must apply to the proper department and be refused payment before he can avoid this presumption. If the claim for use of team was a valid one and has not been paid, it may still be payable; and, if so, the proper officer will pay, and there can be no necessity of applying to this court.

FIFTH. The United States are not responsible for the loss of Wiley's horses after their return home.

There is now no law authorizing the payment for horses thus dying.

There is no evidence in the case showing of what disease they died, or when first attacked. They may have been diseased before they left home, or have become so after they left the service, or for a fault of the owner or driver. Notwithstanding the opinion of Steanburgh, there are no facts to show that the horses died by the fault of the United States, or for the fault of any one for whom they are responsible. The death is not traced to overwork, nor to bad fare, nor to any act of the United States. They may have died from the fault of the owner or driver.

The injury to the sleigh and harness is in no way brought home to the officers who impressed the team. Their previous condition is not shown, nor is that of the horses. There are no sufficient facts proved to enable the court to form an opinion as to the occasion of the death of the horses or of the failure of the sleigh and harness.

SIXTH. The petition does not state when nor upon what consideration the plaintiff became the proprietor of this claim, nor whether he is the sole owner, nor the law upon which the claim is founded.

The first section of the law establishing this court expressly provides: "It shall be the duty of the claimant in all cases to set forth a full statement of the claim and of the action thereon in Congress, or by any of the departments, if any such has been had; *specifying also what person or persons are owners therefor, or interested therein, and when and upon what consideration such person or persons became so interested.*"

These provisions have not been complied with, nor has the first rule of this court, which requires the plaintiff to specify the act of Congress, or rule or regulation of a department, upon which he relies.

For these several causes, the plaintiff cannot recover.

R. H. GILLET, *Solicitor.*

MARCH 19, 1859.

IN THE COURT OF CLAIMS.

JUNE 6, 1859.

JAMES VALENTINE, ASSIGNEE, &c., *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petition in this case was originally filed in the name of Oliver Wiley, and was afterwards, by leave of this Court, amended, so as to allow the petitioner, James Valentine, to claim as the assignee of Oliver Wiley. The original petition stated the following case :

That on or about the first day of March, A. D. 1813, the United States pressed into their service the petitioner, Oliver Wiley, his hired man, one span of horses, a sleigh and harness, and employed them in transporting troops and military stores from Alburg, Vermont, to Plattsburg, and from Plattsburg to Sackett's Harbor, and detained them sixty days, and so used them that the horses died. He claimed to be justly entitled to be paid \$200, the value of the horses, and for one sleigh and harness destroyed, \$25 each, and for sixty days' use of teams and driver at \$2 per day, making in the aggregate \$370, with interest. It was further averred that this claim was presented to Congress in 1854, but what action was had thereon the petitioner, Oliver Wiley, was not informed

By the amendment the petition was made the petition of James Valentine, assignee of Oliver Wiley, and the claim for the use of team and driver was made at the rate of \$3 a day, instead of \$2 a day. The petition was amended in no other respect. The present claimant has nowhere stated "when and upon what consideration" he became interested in the claim. (10 Stat. at L., p. 612, ch. 122, §1.)

George Weeks, a witness on the part of the petitioner, testified as follows :

"That on or about the 8th day of March, A. D. 1813, he was residing at Champlain, Clinton county New York, when a United States officer, a lieutenant, and eight United States soldiers, whose names he does not know, came to his house at Rouse's Point and pressed his team, and the officer and men got into his sleigh ; he was ordered to drive them to Alburg, in the county of Grand Isle, in the State of Vermont, which order he obeyed and drove them to Alburg, where the officer set about pressing other teams, and pressed the span of horses, sleigh, and harness belonging to this claimant into the United States service, and was ordered to Plattsburg, and went there, and was taken into the American camp commanded by General Pike ; that as soon as the said army was ready to move, a squad of soldiers, with implements of war, entered the sleigh of claimant, and the army moved westward in sleighs pressed chiefly for the purpose of moving General Pike's command to Sackett's Harbor. General Pike was present and directed the movements of the army ; that the claimant's team delivered its load at Sackett's Harbor, and was gone thirty days to his knowledge, and how much longer he does not know, as his team gave out and lagged behind.

"The span of horses, sleigh, and harness belonged to the claimant; he, claimant, did not go with the team, but hired one Thomas Clark, who went with it and drove it to Sackett's Harbor. Clark is now dead.

"That he was in company with claimant's team all the way from Plattsburg to Sackett's Harbor; the sleighing was poor, some of the time bare ground. Some of the teams were loaded heavier than others; claimant's team was heavily loaded and obliged to keep up with those that were lighter loaded; they were not suffered to lag behind, and were urged forward whether able to go or not. I noticed that claimant's team was urged beyond its strength, not by the driver, but by those in the sleigh and the officers in command. When they got to Sackett's Harbor claimant's harness was all driven to pieces, and his sleigh broken and horses jaded out. In returning, the horses gave out at Canton, and were unable to draw the broken empty sleigh; the driver was obliged to lead the horses home.

"As horses were going, the span were worth two hundred dollars, the sleigh twenty-five dollars, and the harness twenty-five dollars; the per diem allowance by the United States for a span of horses was three dollars per day and team found by the United States, and four dollars per day when the owner found fodder."

Richard Steenburgh, also a witness on the part of the petitioner, testified as follows:

"That the claimant, in the forepart of March, 1813, was residing in Alburg, Vermont, and a neighbor to this deponent, and was the owner of a span of horses, sleigh, and harness; that on or about the 8th day of March, 1813, a United States press-gang came to Alburg, headed by an officer of the United States army, and pressed the above team, and pressed deponent's team; that they were ordered to Plattsburg as the place of rendezvous, where the main body of the United States army lay, under the command of General Pike, and awaited further orders; that after a detention there of nine days, the whole army of General Pike moved west in the sleighs pressed for that purpose, claimant's team aforesaid being one of them. The teams delivered their loads at Sackett's Harbor, upwards of two hundred miles from where the claimant's team was pressed. Claimant's team was absent in said service sixty days.

"That the manner of entering the service, and the duration of service, has been stated in his answer to the second interrogatory. The service was involuntary. The claimant was obliged to hire a person to drive his team, by the name of Clark, who went with the team to Sackett's Harbor. The horses gave out, in returning, at Canton. The cause of their giving out was the heavy loading them by the United States agents, and crowding them forward over bad roads, and scarcity of fodder. When I saw them at Canton, the horses were entirely jaded out, and could not draw the sleigh. Clark was obliged to leave the sleigh and harness, both of which were broken to pieces and valueless, and lead the horses home. It was sixty days before he got home with them, and they both died soon after from the hard usage aforesaid. The fault was in the United States agents loading them so heavily and compelling them to proceed and keep up with the army. The horses were worth two hundred dollars; the sleigh and harness fifty dollars."

4. "Clark drove the team for claimant, and the team was claimant's. Clark is now dead. I know the claimant nor Clark were not paid."

6. "Claimant married my sister, and he has no interest in the present claim."

7. "That he knows of no other matter or thing material to this case, except it be that the claimant has recently died."

The petitioner has filed in this case a paper in writing, of which the following is a copy:

"I, Oliver Wiley, of the town of Chazy, county of Clinton, State of New York, do hereby sell, assign, grant, and convey, all my right, title, and interest in certain claims that I hold against the United States government to my son, Albert Wiley, in money and land, or whatever I may draw from the United States in my lifetime or after my death. Dated at Chazy this 23d day of March, 1855.

his
"OLIVER + WILEY,
mark.

her
"MARY + WILEY.
mark.

"In presence of—

"ANTHONY TROMBLY.

his
"JOSEPH + GOAYETT."
mark.

The petitioner has also filed in this case another paper in writing, purporting to be an assignment from Albert Wiley to the petitioner. This is all the evidence in this case.

1. As to the two papers above mentioned, whether they are so authenticated as to be properly admissible as evidence in this case, or, if so admissible, what was their legal operation and effect, it is not material for us now to consider.

2. As to the claim for the use of the horses, sleigh, and driver, this case is similar to the case of *Richard Steenburg vs. The United States*, and the same presumption arises from the lapse of time against the original justice of the claim in this case as in that; and, if it were originally just, there is the same ground in this case as in that for the presumption that it has been satisfied. We refer to our opinion in that case for the reasons on which this opinion is founded.

3. As to the claim for the value of the horses that died, the lapse of time renders it impracticable to enter into an investigation with any just ground to hope for a satisfactory result. For the reason assigned by us in the cases of *Aubery vs. The United States*, and *Steenburg vs. the United States*, we consider it unreasonable and unjust at this late period for the United States to be called upon to meet any such demand. But the evidence, even if it be taken to be entirely true, does not satisfy us that the horses died by reason of any such negligence or improper treatment on the part of the United States as would render them liable for their value.

We are of the opinion that the petitioner is not entitled to relief.

